SUPREME COURT OF THE UNITED STATES

FLORIDA *v.* DAMASCO VINCENTE RODRIGUEZ

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

No. 83–1367. Decided November 13, 1984

PER CURIAM.

Respondent Damasco Vincente Rodriguez was charged in a Florida State trial court with possession of cocaine with intent to distribute. The State claimed that on September 12, 1978, he had attempted to transport three pounds of cocaine contained in his luggage through the Miami International Airport. Cocaine seized from the respondent following an examination of his luggage at the airport was suppressed by the Florida trial court on the grounds that respondent's rights under the Fourth and Fourteenth Amendments to the United States Constitution had been violated by the search. The Florida District Court of Appeal affirmed the judgment without opinion, citing its earlier decision in *State* v. *Battleman*, 374 So. 2d 636 (1979). This Court originally denied certiorari, 451 U. S. 1022 (1981), but two years later granted rehearing and remanded the case to the Florida Court of Appeals for reconsideration in the light of our opinions in *Florida* v. *Royer*, 460 U. S. 491 (1983). *Florida* v. *Rodriguez*, —— U. S. —— (1983). The Florida District Court of Appeal again affirmed the suppression of the evidence in a one-word order, and the State has again petitioned for certiorari. Because of the Florida court's suppression of the evidence against him prior to trial, respondent has never been tried for the drug offense with which he was charged, and his former attorneys have advised this Court that he is currently a fugitive from justice.

The only witness to testify at the suppression hearing was officer Charles McGee, who was a police officer with the Dade County Public Safety Department. McGee testified

that he had received about 40 hours of narcotics training in the police academy and, after being assigned to the Narcotics Squad, a five week course from the Organized Crime Bureau, which included one-and-one-half to two weeks of training in narcotic surveillance and drug identification. He had received further training under the auspices of the Drug Enforcement Administration, and at the time of his testimony he had 18 months' experience with the airport unit. He also testified that Miami was a "source city" for narcotics.

McGee testified that he first noticed respondent Rodriguez at the National Airlines ticket counter in the Miami airport shortly after noon on September 12, 1978. McGee's attention was drawn to respondent by the fact that he and two individuals later identified as Blanco and Ramirez behaved in an unusual manner while leaving the National Airlines ticket counter in the Miami airport. McGee and Detective Facchiano, who were both in plain clothes, followed respondent, Ramirez, and Blanco from the ticket counter to the airport concourse from which National Airlines flights departed. Ramirez and Blanco stood side by side on an escalator, and respondent stood directly behind them. The detectives observed Ramirez and Blanco converse with one another, although neither spoke to respondent. At the top of the escalator stairs, Blanco looked back and saw the detectives; he then spoke in a lower voice to Ramirez. Ramirez turned around and looked directly at the detectives, then turned his head back very quickly and spoke to Blanco.

As the three cohorts left the escalator single file, Blanco turned, looked directly at respondent, and said, "Let's get out of here." He then repeated in a much lower voice, "Get out of here." Respondent turned around and caught sight of the detectives. He attempted to move away, in the words of officer McGee, "His legs were pumping up and down very fast and not covering much ground, but his legs were as if the person were running in place." Pet. App. 49. Finding his efforts at flight unsuccessful, respondent confronted officer McGee and uttered a vulgar exclamation.

McGee then showed his badge and asked respondent if they might talk. Respondent agreed, and McGee suggested that they move approximately 15 feet to where Blanco and Ramirez were standing with Facchiano, who now also had identified himself as a police officer.

They remained in the public area of the airport. McGee asked respondent if he had some identification and an airline ticket. Respondent said that he did not, but Ramirez then handed McGee a cash ticket with three names on it—Martinez, Perez, and Rodriguez. In the ensuing discussion, McGee asked respondent what his name was and he replied "Rodriguez"; McGee then asked Blanco what *his* name was and he, too, answered "Rodriguez." Blanco later identified himself correctly. At this point, the officers informed the suspects that they were narcotics officers, and they asked for consent to search respondent's luggage. Respondent answered that he did not have the key, but Ramirez told respondent that he should let the officers look in the luggage, which prompted respondent to hand McGee the key. McGee found three bags of cocaine in the suit bag, and arrested the three men. McGee testified that until he found the cocaine, the three men were free to leave. He also testified that he did not advise respondent that he could refuse consent to the search.

The order of the Florida trial court granting the motion to suppress the cocaine reads as follows:

> "(1) There was no reason to stop the defendant, Damasco Vincente Rodriguez. The Defendant did nothing which would arose an articulable suspicion in the eyes of Detective McGee and Detective Facchiano.
>
> (2) Due to the lack of telling the Defendant he had a right to leave, and the lack of telling the Defendant he had a right to refuse to consent to a search, there was an insufficient showing that the consent herein was com-

pletely untainted due to the lack of the two things previously mentioned.

(3) The statement made by the Defendant's companion did not overcome the taint from the initial illegal stop of the defendant."

We think that the trial court's order as affirmed by the District Court of Appeal reflects a misapprehension of the controlling principles of law governing airport stops enunciated by this Court in *United States* v. *Mendenhall*, 446 U. S. 544 (1980), and *Florida* v. *Royer*, 460 U. S. 491 (1983). Because its ruling was made in May 1979, the trial court obviously cannot be faulted for lack of familiarity with these opinions, but the District Court of Appeal's final affirmance of the suppression order on remand from this Court occurred on November 15, 1983, after these opinions had been issued. We think the trial court's order also reflects a misapprehension of legal principles enunciated in *Schneckloth* v. *Bustamonte*, 412 U. S. 218 (1973).

Certain constraints on personal liberty that constitute "seizures" for purposes of the Fourth Amendment may nonetheless be justified even though there is no showing of "probable cause" if "there is articulable suspicion that a person has committed or is about to commit a crime." *Florida* v. *Royer*, 460 U. S. 491, 498 (opinion of WHITE, J.). Such a temporary detention for questioning in the case of an airport search is reviewed under the lesser standard enunciated in *Terry* v. *Ohio*, 392 U. S. 1 (1968), and is permissible because of the "public interest involved in the suppression of illegal transactions in drugs or of any other serious crime." *Royer*, 460 U. S. at 498–499.

The initial contact between the officers and respondent, where they simply asked if he would step aside and talk with them, was clearly the sort of consensual encounter that implicates no Fourth Amendment interest. *United States* v. *Mendenhall*, 446 U. S. 544, 554 (1980) (opinion of Stewart, J.); *Florida* v. *Royer*, 460 U. S. 491, 497 (1983) (opinion of

WHITE, J.). Assuming, without deciding, that after respondent agreed to talk with the police, moved over to where his cohorts and the other detective were standing, and ultimately granted permission to search his baggage, there was a "seizure" for purposes of the Fourth Amendment, we hold that any such seizure was justified by "articulable suspicion."

Before the officers even spoke to the three confederates, one by one they had sighted the plain clothes officers and had spoken furtively to one another. One was twice overheard urging the others to "get out of here." Respondent's strange movements in his attempt to evade the officers aroused further justifiable suspicion, and so did the contradictory statements concerning the identities of Blanco and respondent. Officer McGee had special training in narcotics surveillance and apprehension; like members of the Drug Enforcement Administration, the Narcotics Squad of the Miami Police Department is "carrying out a highly specialized law enforcement operation designed to combat the serious societal threat proposed by narcotics distribution." *United States* v. *Mendenhall*, *supra*, 446 U. S. at 562 (POWELL, J., concurring). Respondent "was approached in a major international airport where, due in part to extensive antihijacking surveillance and equipment, reasonable privacy expectations are of significantly lesser magnitude. . . ." *Florida* v. *Royer*, 460 U. S. 491, 515 (BLACKMUN, J., dissenting).

We hold, therefore, that the trial court was incorrect both in its conclusion that there was no articulable basis for detaining respondent and in its conclusion that there was "taint" resulting from this initial stop. In *Schneckcloth* v. *Bustamonte*, 412 U. S. 218 (1973), we held that the State need not prove that a defendant consenting to a search knew that he had the right to withhold his consent, although we also held that knowledge of the right to refuse consent could be taken into account in determining whether or not a consent was "voluntary." We are unable to determine from the trial court's opinion whether its conclusion with respect to the vol-

untariness of the consent to search the luggage would have been the same had it correctly applied the governing legal principles embodied in the Fourth Amendment.

The petition for writ of certiorari is therefore granted, the judgment of the Florida Court of Appeal is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

It is so ordered.